

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 UNITED STATES OF AMERICA,

Case No.: 2:13-cr-00301-APG-CWH

4 Plaintiff

**Order Denying Rule 60(b) Motion and
Application for Leave to Proceed In Forma
Pauperis**

5 v.

6 PAUL EDWARD DAVIS,

[ECF Nos. 303, 304]

7 Defendant

8 Defendant Paul Davis moves for relief under Federal Rule of Civil Procedure 60(b) based
9 on “false evidence” and “fraud upon the court.” ECF No. 303. Although entitled a motion under
10 Rule 60(b), Davis’s motion is a second and successive motion under 28 U.S.C. § 2255. Davis’s
11 motion does not fall within the narrow exception of fraud on the federal habeas court that might
12 justify reopening his § 2255 proceeding under Rule 60(b). He has not alleged or shown “an
13 unconscionable plan or scheme which is designed to improperly influence the court in its
14 decision” in the prior habeas proceeding. *United States v. Buenrostro*, 638 F.3d 720, 722-23 (9th
15 Cir. 2011). Instead, he disagrees with the court’s evidentiary rulings at trial and his lawyer’s
16 strategy. He has not presented anything to suggest that “the judicial machinery [did] not perform
17 in the usual manner its impartial task of adjudging cases that are presented for adjudication.” *Id.*
18 (quotation omitted).

19 To bring a second or successive § 2255 motion, a defendant first “shall move in the
20 appropriate court of appeals for an order authorizing the district court to consider the
21 application.” 28 U.S.C. §§ 2244, 2255(h). Davis previously moved for § 2255 relief, so he must
22 move for and obtain an order from the Ninth Circuit Court of Appeals authorizing me to consider

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1 his present motion. He has not done so. Accordingly, I cannot consider his present motion and
2 must deny it as an unauthorized second or successive § 2255 motion.

3 IT IS THEREFORE ORDERED that defendant Paul Davis's Rule 60(b) motion (**ECF**
4 **No. 303**) is **DENIED**.

5 IT IS FURTHER ORDERED that defendant Paul Davis's application for leave to
6 proceed in forma pauperis (**ECF No. 304**) is **DENIED as moot**.

7 DATED this 22nd day of May, 2019.

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10 ANDREW P. GORDON
11 UNITED STATES DISTRICT JUDGE
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